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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,658	12/29/2006	Rudolf Schneckenburger	87305.1520	7603
30734	7590	02/17/2011		EXAMINER
BAKER & HOSTETLER LLP			MERLINO, ALYSON MARIE	
WASHINGTON SQUARE, SUITE 1100				ART UNIT
1050 CONNECTICUT AVE. N.W.				PAPER NUMBER
WASHINGTON, DC 20036-5304				3673
			NOTIFICATION DATE	DELIVERY MODE
			02/17/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

[patents@bakerlaw.com](mailto:patents@bakerlaw.com)

<b>Office Action Summary</b>	<b>Application No.</b> 10/574,658	<b>Applicant(s)</b> SCHNEKENBURGER, RUDOLF
	<b>Examiner</b> ALYSON M. MERLINO	<b>Art Unit</b> 3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 December 2010.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 32-37 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 32-37 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 June 2010 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-878)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____   |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 20 December 2010 has been entered.
2. The examiner acknowledges applicant's cancellation of claims 1-31 and the addition of new claims 32-37.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the intumescent material in an expanded state, filling up areas within the door opener must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. **Claims 32-37 are rejected** under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear from Figure 1 and the claim language of claim 32 how the intumescent material will fill up a free space of the housing in an area of the armature 13 when the figure shows the location of the intumescent material 17 next to the electromagnetic coil 14, but not in an area that one would understand that when the material expands it will cooperate with the armature to hold the opener in a locked position. For examination purposes, the claim will be given a broad interpretation until further clarification from applicant.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. **Claims 32-37 are rejected** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. **In regards to claim 32**, it is unclear how the housing and armature recited in the claim alone will provide the operation or opening function of the door opener, when it is clear from the specification that the door opener, as recited in the preamble of the claim, requires other components, such as the pivot latch and the changeover switch, as recited in claim 36. Furthermore, the free space and the area of the armature have not been defined in the claim language prior to line 2 of the claim, and therefore, there is no antecedent basis for these limitations. Also, the claim recites that the volume of the material expands when the expansion temperature has been reached, however, this characteristic has not been set forth in the previous lines of the claim or has not been related to the material as a characteristic within the claim language. Also, the purpose for the intumescent material within the door opener is unclear, since the claim doesn't recite that the intumescent material holds the armature in a locked position, as recited in claim 33. For examination purposes, the claim will be given a broad interpretation until further clarification from applicant.

9. **In regards to claim 35**, line 2, it is unclear whether the "area of the free end of the armature" is equivalent to the area of the armature recited in claim 32 or is another area entirely. Specifically, the relationship between the area recited in claim 32 and the

area recited in claim 35 is unclear. Furthermore, it is unclear how the expansion pressure acts on the pivot lever of the armature, when claim 34 recites that the armature is in the form of a pivot lever, not that the armature and the pivot lever are separate components, as suggested by the claim language in claim 35. For examination purposes, the claim will be given a broad interpretation until further clarification from applicant.

10. **In regards to claim 36,** the relationship between the “free spaces” recited in claim 36 and the “free space” recited in claim 32 is unclear because claim 32 only recites a single free space, and claim 36 refers to multiple free spaces located in the housing. Furthermore, the claim recites the intumescent material being in a plurality of free spaces, however, claim 32 only recites a single portion of intumescent material, and therefore, the relationship between the intumescent material portion recited in claim 32 and the intumescent material portions recited in 36 is unclear. Also, in line 3, it is unclear which components of the device applicant considers as the affected parts, when the claim only recites a pivot latch and a changeover switch. For examination purposes, the claim will be given a broad interpretation until further clarification from applicant.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. **Claims 32-37 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Thomas (US-4867496) in view of Saino (US-5380053).
13. **In regards to claim 32,** Thomas discloses a door opener (Figure 2) comprising a housing 9 with an armature 12 and a material 44 positioned in the housing (Figure 8) in such a way that the material fills up a free space 47 of the housing in an area of the armature (Figure 8) through volume expansion when an expansion temperature has been reached (Col. 5, lines 15-28). Thomas fails to disclose that the material is an intumescent material. Saino teaches the use of an intumescent material 47 within a latching device. Since replacing the material that expands as a result of heat, disclosed by Thomas, with an intumescent material also expands would still allow the latch position to be fixed, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the material disclosed by Thomas with an intumescent material since both materials expand when subjected to heat.
14. **In regards to claim 33,** Thomas discloses that the material embeds the armature in a locking position as a result of the volume expansion (Col. 5, lines 15-28).
15. **In regards to claim 34,** Thomas discloses that the armature is implemented as a pivot lever (Figure 7) on a joint 35 and is pre-tensioned using an armature spring 37 in such a way that the armature is held in a locking position (Figure 7), and wherein the expanded material presses against the armature and holds the armature in the locking position independently of the action of the armature spring (Col. 5, lines 15-28).

16. **In regards to claim 35,** Thomas discloses that the material is positioned in an area of the free end of the armature so that the expansion pressure acts on the armature (Figures 5 and 8).
17. **In regards to claim 36,** Thomas discloses that the material is provided in the free space inside the housing in the area of a pivot latch 2 and a changeover switch 8, such that the material fills up the free space and blocks the movement of the pivot latch and changeover switch when the expansion temperature has been reached (apparent that the material blocks movement of the armature 12 to block movement of the pivot latch and changeover switch, Figures 5-8).
18. **In regards to claim 37,** Thomas discloses that the material is glued or is stuck tightly with a housing wall (wall of 47, Figure 8) when the material has expanded (Col. 5, lines 15-28).

***Response to Arguments***

19. In regards to applicant's remarks concerning the combination of Thomas and Saino, the examiner respectfully disagrees, noting that Thomas discloses that component 44 can be made of other materials that provide seizure or sticking when the expansion temper is reached (Col. 5, lines 64-68 and Col. 6, lines 1 and 2).
20. The claim objections, rejections under 35 U.S.C. 112, second paragraph, and rejections under 35 U.S.C. 103 set forth in the previous office action are moot since claims 21-31 have been canceled.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALYSON M. MERLINO whose telephone number is (571)272-2219. The examiner can normally be reached on Monday through Friday, 7:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on (571) 272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AM  
February 11, 2011

/Carlos Lugo/  
Primary Examiner, Art Unit 3673